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SUBJECT: MEXICAN PRESIDENT CALDERON SIGNS CRIMINAL JUSTICE  
AND PUBLIC SAFETY CONSTITUTIONAL REFORMS

¶1. SUMMARY: On Tuesday June 17, 2008 at 8:30am, President Felipe de Jesus Calderon Hinojosa signed the decree promulgating constitutional reforms for criminal justice and public safety. The amendments must now be published in the official gazette, and will become effective 30 days after publication.

¶2. BACKGROUND. On February 26, 2008, the Chamber of Deputies approved the Senate version of the constitutional justice reforms (463 votes in favor, 6 against and 1 abstention). Mexico requires Constitutional reforms be ratified by at least 17 state legislatures (50% plus 1). To date, 23 states have ratified the reforms and no state has rejected them. The remaining states have not voted on the reforms because their legislatures are not in session. President Calderon announced that since 23 states exceeds the majority required for ratification, that he would sign said reforms into law.

#### KEY ASPECTS OF CONSTITUTIONAL REFORMS

¶3. Ten Articles of the Mexican Constitution (Articles 16, 17, 18, 19, 20, 21, 22, 73, 115 and 123) were amended. The rights of due process are inherent, in that no person may be sentenced before a final judgment has been entered at a fair trial; and that all pre-trial hearings must be heard by a judge pursuant to the principles of orality (defined as transparency, speedy trial, continuity, and confrontation of witnesses).

¶4. The reforms will facilitate the use of better investigative techniques, with greater emphasis on the collection, analysis, and presentation of scientific evidence. There will be less reliance on confessions as a basis for conviction, which should lessen the motivation to obtain confessions by any, including, illicit, means. Confessions obtained through illicit means, i.e. torture, will not be admissible. Prosecutors will direct investigations, but police will have investigative powers as well. Prosecutors will have the power to designate which federal and/or state police force(s) will conduct investigations under their oversight and guidance.

¶5. All police forces must adhere to strict certification procedures which will be established in the secondary laws governing them.

¶6. The constitutional justice reforms introduce alternative means of resolving lesser criminal cases. Under the existing system, all cases proceed to trial regardless of community

impact, and the courts are notoriously congested. The introduction of alternative means of disposing of cases will permit prosecutors to focus their attention on major crimes, such as those perpetrated by organized crime related to narcotics and trafficking in persons.

¶7. The reforms also expand the use of alternatives to pre-trial detention. As in the U.S. system, Mexican judges will determine whether or not a defendant may be released on bail based on factors including the seriousness of the crime, flight risk, propensity to perform another delinquent act, and so forth.

¶8. Under the constitutional justice reforms the public defense will be strengthened. The reforms dictate that the public defense will earn the same salary as the prosecutors. (At the state level this is more meaningful since most state public defenders do not earn the same salaries as state prosecutors. However, at the federal level, the public defense earns more than most prosecutors.)

¶9. Post-sentencing guidelines. Judges will preside over the felons in all post-conviction issues - including ensuring that sentences are complied with, and that no felon will over-serve his/her sentence. Also, it foresees the active participation of victims in criminal cases.

¶10. Finally, the Constitutional reforms provide for

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"civil-like" forfeiture of illicit assets. Under the previous law, assets can be seized only following the criminal conviction of the owner or in cases of abandonment. Under the reforms, a new asset forfeiture law can be passed to allow for ownership of illicit assets to be extinguished and transferred to the government in more expeditious and less onerous proceedings than a criminal trial.

#### Human Rights Concerns

¶11. Human Rights Organizations criticized the reforms for permitting the detention of defendants accused of having committed an organized crime, of up to 80 days - that is, they can be detained for 80 days while prosecutors complete these complex investigations. However, such temporary detention prior to being formally charged must be approved in advance by a judge. This 80 day provision is actually less than the 90 days allowed by the old system.

#### The Old System

¶12. Although legal experts agree that the Constitutional Assembly of 1917 intended to establish an oral, adversarial criminal justice system, this did not occur. The previous justice system defied reform efforts and remained inquisitorial and secretive system, characterized by an inherently ambiguous design. The system relied far more heavily on confessions than on any other form of evidence; police and the local, state, and federal levels did not have the capacity to collect and analyze forensic evidence. The flaws contributed to enormous public distrust of the entire justice sector.

¶13. The Constitutional reforms as signed by President Calderon are without a doubt the most important reform in the field of justice and public safety since 1917.

## The Reform Timetable

¶14. Although Mexico has up to eight years to transform its criminal justice system into an oral adversarial criminal justice system, there are several aspects of the reforms that will become effective in 30 days.

¶15. All police are now eligible to investigate crimes. Unfortunately, the lack of preparation, regulations to guide the police and coordination between police departments, will make it difficult for prosecutors to build a solid case. The U.S. Embassy plans to support Mexican reformers as they provide technical assistance and training to police units, not just criminal investigators.

¶16. Although all articles regarding organized crime are effective immediately, secondary legislation will be necessary prior to implementation. The GOM has requested technical assistance from the USG on issues such as recording telephone conversations and asset forfeiture.

¶17. Organized crime suspects may be detained in Federal safe houses for up to 80 days. Mexican states have been given authority to determine the serious state crimes (such as TIP, homicide, rape) wherein state authorities can place defendants under home arrest for up to 40 days when they are suspects of these said serious offenses.

¶18. Prosecutors can request wiretap warrants for any method of communication (telephone, internet, etc.). Prosecutors will have more efficient and an expedited means of obtaining these warrants. The reforms also allow admissibility of consensual one-party recordings without need for a warrant. Federal judges need to be trained so that the warrants can be rapidly obtained while placing the burden and responsibility on the prosecutors in order to minimize abuse of these

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practices.

Mexican States, experience in Judicial Reforms

¶19. The 8 states that have begun implementation of oral, adversarial codes of criminal procedure (Baja California, Chihuahua, State of Mexico, Oaxaca, Puebla, Morelos, Nuevo Leon and Zacatecas) will need to make certain modifications (some less than others) to their codes, prior to officially becoming the first states to abide by the new Federal Constitution. Chihuahua is in the best of circumstances since it will need only to modify and create a civil service for its public defense and to reduce its standard of proof to probable cause in order to detain and/or indict an individual.

¶20. CONCLUSION. Reforms will impact the federal government, the Federal District and all 31 states. All entities will have to reform their code of criminal procedures within the next eight years. USAID has provided technical assistance to five states (Chihuahua, Oaxaca, Morelos, Baja California and Zacatecas) that allowed them to experiment with judicial reforms. Their experience helped inform the national Congress and the Administration as they drafted and passed the national judicial reforms. The states and their experience will now serve as a model for the rest of the country. The reforms are an immense task that will require massive investments in technical assistance, training and construction as people, buildings and institutions meet the requirements of the judicial reforms. It will be eight years of intensive work which will require enormous amounts of human and financial resources.

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